

BEFORE THE DEPARTMENT OF ADMINISTRATIVE SERVICES,
THE DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT, AND
THE DEPARTMENT OF ENVIRONMENTAL QUALITY
OF THE STATE OF OREGON

IN THE MATTER OF THE CLAIM FOR) FINAL ORDER
COMPENSATION UNDER ORS 197.352) CLAIM NO. M122395
(BALLOT MEASURE 37) OF)
V. Robert and Elizabeth Thomsen, CLAIMANTS)

Claimants: V. Robert and Elizabeth Thomsen (the Claimants)

Property: Township 2N, Range 11E, Section 7, Tax lot 1500, Hood River County
(the Property)

Claim: The demand for compensation and any supporting information received from the
Claimants by the State of Oregon (the Claim).

Claimants submitted the Claim to the State of Oregon under ORS 197.352. Under OAR 125-145-0010 *et seq.*, the Department of Administrative Services (DAS) referred the Claim to the Department of Land Conservation and Development (DLCD) as the regulating entity. This order is based on the record herein, including the Findings and Conclusions set forth in the Final Staff Reports and Recommendation of DLCD (the DLCD Report), and the Department of Environmental Quality (the DEQ Report), attached to and by this reference incorporated into this order.

ORDER

The Claim is denied as to laws administered by the DEQ for the reasons set forth in the DEQ Report.

The Claim is approved as to laws administered by DLCD and the Land Conservation and Development Commission (LCDC) for the reasons set forth in the DLCD Report, and subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert and Elizabeth Thomsen's division of the 20.88-acre property into a maximum of 80 to 90 parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660-011-0060 and 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 7, 1969.

2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 7, 1969. On that date, the claimants' use of the subject property was subject to Hood River County Zoning Ordinance 2.

3. To the extent that any law, order, deed, agreement, or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.

4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).

5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

This Order is entered by the Director of the DLCD as a final order of DLCD and the Land Conservation and Development Commission under ORS 197.352, OAR 660-002-0010(8), and OAR 125, division 145, and by the Administrator for the State Services Division of the DAS as a final order of DAS under ORS 197.352, OAR 125, division 145, and ORS 293.

This Order is entered by the Deputy Director of the DEQ as a final order of DEQ under ORS 197.352, and OAR Chapter 125, division 145.

FOR DLCD AND THE LAND
CONSERVATION AND DEVELOPMENT
COMMISSION:


Lane Shetterly, Director
DLCD
Dated this 31st day of July, 2006.

FOR THE DEPARTMENT OF
ADMINISTRATIVE SERVICES:


David Hartwig, Administrator
DAS, State Services Division
Dated this 31st day of July, 2006.

FOR THE FOR DEPARTMENT OF
ENVIRONMENTAL QUALITY


Paul Slyman, Deputy Director
DEQ
Dated this 31st day of July, 2006

NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to the following judicial remedies:

1. Judicial review under ORS 183.484: Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 may be filed in the Circuit Court for Marion County or the Circuit Court in the county in which you reside.
2. A cause of action under ORS 197.352 (Measure 37 (2004)): If a land use regulation continues to apply to the subject property more than 180 days after the present owner of the property has made written demand for compensation under ORS 197.352¹, the present owner of the property, or any interest therein, shall have a cause of action in the circuit court in which the real property is located.

(Copies of the documents that comprise the record are available for review at the Department's office at 635 Capitol Street NE, Suite 150, Salem, Oregon 97301-2540)

FOR INFORMATION ONLY

The Oregon Department of Justice has advised the Department of Land Conservation and Development that "[i]f the current owner of the real property conveys the property before the new use allowed by the public entity is established, then the entitlement to relief will be lost."

¹ By order of the Marion County Circuit Court, "all time lines under Measure 37 [were] suspended indefinitely" on October 25, 2005. This suspension was lifted on March 13, 2006 by the court. As a result, a period of 139 days (the number of days the time lines were suspended) has been added to the 180-day time period under ORS 197.352(6) for claims that were pending with the state on October 25, 2005.

ORS 197.352 (BALLOT MEASURE 37) CLAIM FOR COMPENSATION

**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT
Final Staff Report and Recommendation**

July 31, 2006

STATE CLAIM NUMBER: M122395

NAMES OF CLAIMANTS: V. Robert and Elizabeth Thomsen

MAILING ADDRESS: 615 Willow Creek Road
Lander, Wyoming 82520

PROPERTY IDENTIFICATION: 1656 Eastside Road
Township 2N, Range 11E, Section 7
Tax lot 1500
Hood River County

OTHER CONTACT INFORMATION: Steven B. Anderson, agent
Cascade Planning Associates
PO Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: September 19, 2005

180-DAY DEADLINE: August 2, 2006¹

I. SUMMARY OF CLAIM

The claimants, Robert and Elizabeth Thomsen, seek compensation in the amount of \$6,418,400 for the reduction in fair market value as a result of land use regulations that are alleged to restrict the use of certain private real property. The claimants desire compensation or the right to divide the 20.88-acre property into 8,000 square-foot parcels and to develop a dwelling on each parcel. The subject property is located at 1636 Eastside Road, near Hood River, in Hood River County. (See claim.)

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Land Conservation and Development (the department) has determined that the claim is valid. Department staff recommends that, in lieu of compensation, the requirements of the following state laws enforced by the Land Conservation and Development Commission (the Commission) or the department

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

not apply to Robert and Elizabeth Thomsen's division of the 20.88-acre property into a maximum of 80 to 90 parcels and to their development of a dwelling on each parcel: applicable provisions of Statewide Planning Goals 3 (Agricultural Lands), 11 (Public Facilities and Services) and 14 (Urbanization); ORS 215; and Oregon Administrative Rules (OAR) 660-011-0060 and 660, division 33. These laws will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired fee title to the property on April 7, 1969. (See the complete recommendation in Section VI of this report.)

III. COMMENTS ON THE CLAIM

Comments Received

On October 10, 2005, pursuant to OAR 125-145-0080, the Oregon Department of Administrative Services (DAS) provided written notice to the owners of surrounding properties. According to DAS, three written comments were received in response to the 10-day notice.

The comments do not address whether the claim meets the criteria for relief under ORS 197.352. Comments concerning the effects a use of the subject property may have on surrounding areas are generally not something that the department is able to consider in determining whether to waive a state law. If funds do become available to pay compensation, then such effects may become relevant in determining which claims to pay compensation for instead of waive a state law. (See the comment letters in the department's claim file.)

IV. TIMELINESS OF CLAIM

Requirement

ORS 197.352(5) requires that a written demand for compensation be made:

1. For claims arising from land use regulations enacted prior to the effective date of Measure 37 (December 2, 2004), within two years of that effective date, or the date the public entity applies the land use regulation as an approval criteria to an application submitted by the owner, whichever is later; or
2. For claims arising from land use regulations enacted after the effective date of Measure 37 (December 2, 2004), within two years of the enactment of the land use regulation, or the date the owner of the property submits a land use application in which the land use regulation is an approval criteria, whichever is later.

Findings of Fact

This claim was submitted to DAS on September 19, 2005, for processing under OAR 125, division 145. The claim identifies "Hood River County Subdivision and Partition Ordinance—HRCZO Article 18; Hood River County Zoning Ordinance—Articles 7, 60, 61, 64, 72 and 75; Hood River Comprehensive Plan; State Land Division Statutes—ORS 92; State Land Use Statutes—ORS 197, 215 and 227 and administrative rules; and State Sewage Disposal Standards—

ORS 454 and administrative rules” as the basis for the claim.² Only laws that were enacted or adopted prior to December 2, 2004, are the basis for this claim.

Conclusions

The claim has been submitted within two years of the effective date of Measure 37 (December 2, 2004), based on land use regulations enacted or adopted prior to December 2, 2004, and is therefore timely filed.

V. ANALYSIS OF CLAIM

1. Ownership

ORS 197.352 provides for payment of compensation or relief from specific laws for “owners” as that term is defined in ORS 197.352. ORS 197.352(11)(C) defines “owner” as “the present owner of the property, or any interest therein.”

Findings of Fact

The claimants, Robert and Elizabeth Thomsen, acquired an interest in the subject property on April 7, 1965, as reflected by a land sale contract. That land sale contract, included with the claim, provides that the claimants were required to maintain the subject property as an orchard. As a result, the claimants did not acquire the right to use the subject property in the manner that they now intend (for residential use) until April 7, 1969, when they acquired fee title as shown by a fulfillment warranty deed included with the claim. A May 17, 2005, plant service report states that V. Robert Thomsen and Elizabeth P. Thomsen are “tenants by the entirety,” which establishes the claimants’ current ownership of the subject property.

Conclusions

The claimants, Robert and Elizabeth Thomsen, are “owners” of the subject property as that term is defined by ORS 197.352(11)(C), as of April 7, 1969.

2. The Laws That are the Basis for This Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimants’ use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimants or a family member acquired the property.

² The claim identifies certain laws administered by state agencies other than the Department of Land Conservation and Development. A separate report for this claim will be prepared by the Oregon Department of Environmental Quality (DEQ), addressing laws administered by that agency.

Findings of Fact

The claim indicates that certain statutes contained within ORS 92, 197, 215 and 227, as well as certain administrative rules, have prevented the claimants from dividing their property into 80 or 90 residential lots of at least 8,000 square feet with a dwelling on each lot.

ORS 92 establishes procedures and requirements for partitioning and subdividing property. Most of the statutes in this chapter listed in the claim were in effect the time the claimants acquired the right to develop the property in 1969. In the absence of more specific information concerning how specific statutes in this chapter, enacted since 1969, restrict the claimants' desired use, the department is unable to determine that any particular statute restricts the claimants' desired use.

ORS 197 establishes procedures and requirements for local comprehensive planning. The statutes listed in this chapter were enacted after the claimants acquired the right to use the subject property for residential purposes; however, the claimants provide no information concerning how the listed statutes restrict their desired use of the property.

ORS 227 establishes procedures for land use planning within cities. The claimants identify one specific statute in this chapter: ORS 227.110. This statute was in effect well before the claimants' acquired the subject property, and claimants failed to identify a more recent amendment to the statute that restricts their desired use of the property.

The claim is based generally on Hood River County's current Exclusive Farm Use (EFU) zone and the applicable provisions of state law that require such zoning. The claimants' property is zoned EFU as required by Goal 3, in accordance with ORS 215 and OAR 660, division 33, because the claimants' property is "agricultural land" as defined by Goal 3.³ Goal 3 became effective on January 25, 1975, and required that agricultural lands as defined by the Goal be zoned EFU pursuant to ORS 215.

Current land use regulations, particularly ORS 215.263, 215.284 and 215.780 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, prohibit the division of EFU-zoned land into parcels less than 80 acres and establish standards for development of dwellings on existing or proposed parcels on that land.

ORS 215.780 establishes an 80-acre minimum size for the creation of new lots or parcels in EFU zones and became effective on November 4, 1993 (Chapter 792, Oregon Laws 1993). ORS 215.263 (2005 edition) establishes standards for the creation of new parcels for non-farm uses and dwellings allowed in an EFU zone.

OAR 660-033-0135 (applicable to farm dwellings) became effective on March 1, 1994, and interprets the statutory standard for a primary dwelling in an EFU zone under ORS 215.283(1)(f). OAR 660-033-0130(4) (applicable to non-farm dwellings) became effective on August 7, 1993, and was amended to comply with ORS 215.284(4) on March 1, 1994. The Commission subsequently adopted amendments to comply with House Bill 3326 (Chapter 704,

³ The claimants' property is "agricultural land" because it contains Natural Resources Conservation Service Class I-IV soils.

Oregon Laws 2001, effective on January 1, 2002), which were effective on May 22, 2002. (See administrative rule history for OAR 660-033-0100, -0130 and -0135.)

Goal 14 would likely apply to the division of the claimants' property into parcels of two acres or smaller. Goal 14 generally requires that land outside of urban growth boundaries (UGBs) be used for rural uses. Goal 14 became effective on January 25, 1975.

The claim cites OAR 660-011-0060 and 660-011-0065 as regulations affecting the use of the subject property. These rules implement Goals 11 and 14 and regulate the provision of sewer and water service, respectively, to rural land. Goal 11 was effective on January 25, 1975, and requires certain jurisdictions to plan for public facilities and services and limits the extension of sewer service outside UGBs. The administrative rules do not prohibit extension of water service, and it has therefore not been demonstrated how OAR 660-011-0065 affects the value of the subject property. Goal and rule restrictions regarding sewer service apply both to providers of sewer systems and to individual properties that may be served by such systems. To the extent Goal 11 and its rule (0060) prevent the claimants from constructing a sewer system entirely on the subject property in order to serve residential subdivision lots only on that property, they are land use regulations affecting the property. However, Goal 11 and related rule restrictions also prohibit public or private entities from extending sewer or water systems from other property to serve land outside UGBs, and this provision will not be waived by the department.

The claimants acquired the right to develop the subject property for residential use on April 7, 1969, prior to the adoption of the statewide planning goals and their implementing statutes and regulations.

The claim also lists certain statutes in ORS 526 and 527, which relate to forest practices. No information is provided concerning how these statutes restrict the claimants' use of the subject property for residential purposes, and the claimants have not proposed a forest operation. As a result, these laws do not apply to claimants' use of their property. In addition, the claim lists certain statutes in ORS 536 and 537 pertaining to regulation of water use. However, the claim indicates that in the desired residential use of the property, the property would be provided with water service from Crystal Springs Water District and that water is available. As a result, these laws do not apply to claimants' desired use of the property. In addition, these laws predate the claimants' acquisition of the right to develop the subject property for residential use.

Conclusions

The current zoning requirements, minimum lot size and dwelling standards established by applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660-011-0060 and 660, division 33, were all enacted or adopted after the claimants acquired the subject property in 1969 and do not allow the desired division or residential development of the property. These are the laws that restrict the claimants' desired use of the subject property relative to the uses allowed when they acquired the property. The state will not waive Goal 11 with regard to the extension or establishment of sewer service for the proposed use as it relates to a provider of the service.

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. There may be other laws that currently apply to the claimants' use of the subject property, and that may

continue to apply to the claimants' use of the property, that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, ORS 197.352(1) requires that the land use regulation(s) (described in Section V.(2) of this report) must have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claim includes an estimate of \$6,418,400 as the reduction in the subject property's fair market value due to the regulation(s). This amount is based on a MAI appraisal.

Conclusions

As explained in Section V.(1) of this report, the claimants are Robert and Elizabeth Thomsen who acquired the subject property on April 7, 1969. Under ORS 197.352, the claimants are due compensation for land use regulations that restrict the use of the subject property and have the effect of reducing its fair market value. Based on the findings and conclusions in Section V.(2) of this report, laws enacted or adopted since the claimants acquired the subject property restrict the claimants' desired use of the property. The claimants estimate that the effect of the regulations(s) on the fair market value of the subject property is a reduction of \$6,418,400.

Without additional evidence and documentation and without verification of whether or the extent to which the claimants' desired use of the subject property was allowed under the standards in effect when the claimants acquired the property, it is not possible to substantiate the specific dollar amount by which the land use regulations have reduced the fair market value of the property. Nevertheless, based on the evidence in the record for this claim, the department determines that the fair market value of the subject property has been reduced to some extent as a result of land use regulations enforced by the Commission or the department.

4. Exemptions Under ORS 197.352(3)

ORS 197.352 does not apply to certain land use regulations. In addition, under ORS 197.352(3), certain types of laws are exempt from ORS 197.352.

Findings of Fact

The claim is based on state land use regulations that restrict the use of the subject property, including applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660-011-0060 and 660, division 33, which Hood River County has implemented through its current EFU zone. All of these land use regulations were enacted or adopted after the claimants acquired the subject property.

Conclusions

Without a specific development proposal for the subject property, it is not possible for the department to determine all the laws that may apply to a particular use of the property, or whether those laws may fall under one or more of the exemptions under ORS 197.352. It appears that none of the general statutory, goal and rule restrictions on division and development of the claimants' property were in effect when the claimants acquired it in 1969. As a result, these laws are not exempt under ORS 197.352(3)(E). However, Hood River County's Ordinance 1, adopted on June 13, 1962, limiting lot size to 8,000 square feet, was in effect when the claimants acquired the subject property.

Laws in effect when the claimants acquired the subject property are exempt under ORS 197.352(3)(E) and will continue to apply to the claimants' use of the property. There may be other laws that continue to apply to the claimants' use of the subject property that have not been identified in the claim. In some cases, it will not be possible to know which laws apply to a use of subject property until there is a specific proposal for that use. When the claimants seek a building or development permit to carry out a specific use, it may become evident that other state laws apply to that use. In some cases, some of these laws may be exempt under ORS 197.352(3)(A) to (D).

This report addresses only those state laws that are identified in the claim, or that the department is certain apply to the subject property based on the use that the claimants have identified. Similarly, this report only addresses the exemptions provided for under ORS 197.352(3) that are clearly applicable, given the information provided to the department in the claim. The claimants should be aware that the less information they have provided to the department in the claim, the greater the possibility that there may be additional laws that will later be determined to continue to apply to their use of the subject property.

VI. FORM OF RELIEF

ORS 197.352(1) provides for payment of compensation to an owner of private real property if the Commission or the department has enforced laws that restrict the use of the subject property in a manner that reduces its fair market value. In lieu of compensation, the department may choose to not apply the law in order to allow the present owner to carry out a use of the subject property permitted at the time the present owner acquired the property. The Commission, by rule, has directed that if the department determines a claim is valid, the Director of the department must provide only non-monetary relief unless and until funds are appropriated by the legislature to pay claims.

Findings of Fact

Based on the findings and conclusions set forth in this report, laws enforced by the Commission or the department restrict the claimants' desired use of the subject property. The claim asserts that existing state land use regulations enforced by the Commission or the department have the effect of reducing the fair market value of the subject property by \$6,418,400. However, without additional evidence and documentation demonstrating that the land use regulations described in Section V.(2) reduce the fair market value of the subject property, a specific amount of compensation cannot be determined. In order to determine a specific amount of compensation

due for this claim, it would also be necessary to verify whether or the extent to which the claimants' desired use of the property was allowed under the standards in effect when they acquired the right to develop the property for residential use in 1969. Information submitted with the claim indicates that in 1969, the smallest parcel that the claimants could have developed was five acres under Hood River County's Zoning Ordinance 2. Nevertheless, based on the record for this claim, the department has determined that the laws on which the claim is based have reduced the fair market value of the subject property to some extent.

No funds have been appropriated at this time for the payment of claims. In lieu of payment of compensation, ORS 197.352 authorizes the department to modify, remove or not apply all or parts of certain land use regulations to allow Robert and Elizabeth Thomsen to use the subject property for a use permitted at the time they acquired the property on April 7, 1969.

Conclusions

Based on the record, the department recommends that the claim be approved, subject to the following terms:

1. In lieu of compensation under ORS 197.352, the State of Oregon will not apply the following laws to Robert and Elizabeth Thomsen's division of the 20.88-acre property into a maximum of 80 to 90 parcels or to their development of a dwelling on each parcel: applicable provisions of Goals 3, 11 and 14, ORS 215 and OAR 660-011-0060 and 660, division 33. These land use regulations will not apply to the claimants only to the extent necessary to allow them to use the subject property for the use described in this report, and only to the extent that use was permitted when they acquired the property on April 7, 1969.
2. The action by the State of Oregon provides the state's authorization to the claimants to use the subject property for the use described in this report, subject to the standards in effect on April 7, 1969. On that date, the claimants' use of the subject property was subject to Hood River County Zoning Ordinance 2.
3. To the extent that any law, order, deed, agreement, or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, the order will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a "permit" as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies and restrictions on the use of the subject property imposed by private parties.
4. Any use of the subject property by the claimants under the terms of the order will remain subject to the following laws: (a) those laws not specified in (1) above; (b) any laws enacted or enforced by a public entity other than the Commission or the department; and (c) those laws not subject to ORS 197.352 including, without limitation, those laws exempted under ORS 197.352(3).
5. Without limiting the generality of the foregoing terms and conditions, in order for the claimants to use the subject property, it may be necessary for them to obtain a decision under ORS 197.352 from a city and/or county and/or metropolitan service district that enforces land

use regulations applicable to the property. Nothing in this order relieves the claimants from the necessity of obtaining a decision under ORS 197.352 from a local public entity that has jurisdiction to enforce a land use regulation applicable to a use of the subject property by the claimants.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 12, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.

**ORS 197.352 (BALLOT MEASURE 37 (2004))
CLAIM FOR COMPENSATION**

**OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY
Final Staff Report and Recommendation
July 31, 2006**

STATE CLAIM NUMBER: M122395

NAMES OF CLAIMANTS: V. Robert and Elizabeth Thomsen

MAILING ADDRESS: 615 Willow Creek Road
Lander, Wyoming 82520

PROPERTY IDENTIFICATION: 1656 Eastside Road
Township 2N, Range 11E, Section 7
Tax lot 1500
Hood River County

OTHER CONTACT INFORMATION: Steven B. Anderson, Agent
Cascade Planning Associates
P.O. Box 135
Mosier, Oregon 97040

DATE RECEIVED BY DAS: September 19, 2005

180-DAY DEADLINE: August 2, 2006¹

I. SUMMARY OF CLAIM

See Department of Land Conservation and Development (DLCD) Staff Report.

II. SUMMARY OF STAFF RECOMMENDATION

Based on the findings and conclusions set forth below, the Department of Environmental Quality (the department) has determined that the claim is not valid as to laws administered by the department. The rules listed in the claim pertaining to the department or the Environmental Quality Commission (Commission) are not "land use regulations," have not been enforced as to this property, and are likely exempt under ORS 197.352(3). (See the complete recommendation in Section VI. of this report.)

¹ This date reflects 180 days from the date the claim was submitted, as extended by the 139 days that all timelines under Measure 37 were suspended during the pendency of *MacPherson v. Dept. of Admin. Svcs.*, 340 Or 117 (2006).

III. COMMENTS ON THE CLAIM

See DLCD staff report.

IV. TIMELINESS OF CLAIM

See DLCD staff report.

V. ANALYSIS OF CLAIM

1. Ownership

The findings of the Staff Report of the Department of Land Conservation and Development on this claim regarding ownership are incorporated into this report by this reference.

2. The Laws that Are the Basis for the Claim

In order to establish a valid claim, ORS 197.352(1) requires, in part, that a law must restrict the claimant's use of private real property in a manner that reduces the fair market value of the property relative to how the property could have been used at the time the claimant or a family member acquired the property.

Findings of Fact

The claimants wish to subdivide the subject property into 80 or 90 residential lots of at least 8,000 square feet, with a dwelling on each. The claim lists numerous statutes and rules administered by the department and Commission, but contains no explanation of why or how these laws restrict the claimants' use of the property or have reduced the value of the property. Nothing in the rules or statutes listed restrict the division of land into residential lots as proposed by claimants.

Under ORS 197.352(11) "land use regulations" do not include administrative rules of the Oregon Environmental Quality Commission. As a result, no relief may be authorized with regard to the Commission's rules.

Conclusions

Nothing in the statutes or rules listed in the claim restricts the division of the property into residential lots. The claim includes no evidence demonstrating how the listed rules and statutes restrict the use of the property.

3. Effect of Regulations on Fair Market Value

In order to establish a valid claim, Section 1 of Ballot Measure 37 requires the current land use regulation(s) described in Section V. (2). of this report to have "the effect of reducing the fair market value of the property, or any interest therein."

Findings of Fact

The claimants have not demonstrated that the listed statutes or rules have had any effect on the value of the subject property.

Conclusions

The claimants have not demonstrated that the listed rule administered by the Department or Commission restricts the desired use of the property and thus, have not demonstrated that the rule reduces the fair market value of the subject property.

4. Exemptions under section 3 of Measure 37

Ballot Measure 37 (2004) does not apply to certain land use regulations. The type of land use regulations not subject to a claim for compensation under Ballot Measure 37 are set forth in section 3 of the measure. These include laws restricting or prohibiting activities for the protection of public health and safety

Findings of Fact

The statutes and rules listed in the claim likely are exempt as laws enacted to protect the public health and safety. Without some evidence from the claimants as to how and why the listed law restricts the use of the property, however, the Department is unable to determine whether this or other exemptions under ORS 197.352 (3) apply. (See section V.2, above.)

VI. FORM OF RELIEF

Based on the current record, the claimants are not entitled to relief under ballot Measure 37 as to the statutes and rules listed in the claim that are administered by DEQ. Department staff recommend this claim be denied.

VII. COMMENTS ON THE DRAFT STAFF REPORT

The department issued its draft staff report on this claim on July 12, 2006. OAR 125-145-0100(3), provided an opportunity for the claimants or the claimants' authorized agent and any third parties who submitted comments under OAR 125-145-0080 to submit written comments, evidence and information in response to the draft staff report and recommendation. Comments received have been taken into account by the department in the issuance of this final report.